IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6668 of 1999

with

SPECIAL CIVIL APPLICATION No 6190 to 6242, all of 2000

with

SPECIAL CIVIL APPLICATION NO. 8301 TO 8347, ALL OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT S.T DRIVER CONDUCTOR TRAFFIC STAFF ASSOCIATION

Versus

GSRTC

Appearance:

MR Falgun Brahmbhatt for Petitioner

MR HARDIK C RAWAL for Respondent No. 1

MR A.D.OZA GOVT. PLEADER for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 30/08/2000

CAV JUDGEMENT

Learned advocate Mr. Falgun Brahmbhatt is appearing for the petitioner. Learned advocate Mr.H.C. Raval is appearing for the respondent Corporation. Learned Government Pleader Mr. A.D.Oza is appearing for the respondent State of Gujarat in this group of petitions.

Earlier, notice was issued on 2nd September, 1999 and, thereafter, rule has been issued with interim relief directing the respondent corporation to deposit the amount of House Rent Allowance which would otherwise be payable to each of the concerned workmen in a separate account. Thereafter, considering the joint request made by the learned advocates for the parties, that in view of the decision given by this court in special civil application no. 7278 of 1999 which is having direct impact on these petitions, this group of petitions was ordered to be treated as part heard by this court. Thereafter, the petitioner in the main special civil application no. 6668 of 1999 was directed to file separate one page petition for each of the concerned workmen.

Special Civil Application No. 6668 of 1999 was filed by the Gujarat ST Driver Conductor Traffic Staff Association through its Addl. General Secretary taking the cause of about 100 of its workmen. Brief facts leading to the filing of these petitions are as under:

That the petitioner union had raised demand for the workmen working at Gandhinagar Depot for housing accommodation during the year 1998-99. Written representations were filed alongwith the signatures of all the workmen of the Gandhinagar Depot vide letter dated 3.11.1998. In response to the said demand, respondent No.2 Government of Gujarat, Roads and Building Division, vide its resolution dated 10.3.1999, has allotted J(2) Type 200 Houses in consultation with respondent No.1 Corporation. Itis submitted that the economic rent was fixed at Rs.400/- per month. Thereafter, in breach of the provisions of the Industrial Disputes Act,1947 and without giving notice of change, house rent allowance was discontinued with effect from May,1999 in addition to the collection of Rs.400/towards HRA as economic rent against which action of the respondents, the petitioner union had registered its protest for deduction of HRA but of no avail and hence

the petitioners have filed the aforesaid petitions before this Court.

Against the present petitions, the respondent No. 1 corporation has filed affidavit in reply. Respondent No.2 State of Gujarat has not filed any affidavit in reply to the present petitions. In the reply filed by the respondent corporation, it has been inter alia contended that this is not a fit case for exercising extra ordinary powers under Article 226 of the Constitution. It is also contended that in pursuance of the special efforts on the part of the ST Corporation, the State Government has decided to allocate 200 quarters of J(2) Type for the employees of the corporation at Gandhinagar. Itis also pointed out that at the first instance, 200 employees had made request for allocating quarters but actually only 142 have taken actual possession of the quarters and the remaining employees were working at City Depot of Ahmedabad and not at Gandhinagar. It is also contended that the respondent corporation has deposited with the State Government an amount of Rs. 800/- per quarter wherein Rs.400/- were towards the deposit of each quarter and Rs.400/- towards one month economic rent against each quarter. All the concerned 142 employees had given undertaking to the effect that all the terms and conditions which was part and parcel of the order of allocation of quarter were applicable to them and the employees have also specifically agreed by filing individual undertaking that they will pay Rs.400/- p.m. as economic rent and as per the policy of the Government, they will not raise any dispute or grievance regarding house rent allowance. In other words, it is mentioned that the policy of the Government is acceptable to them as far as the grant of house rent allowance is concerned. It is submitted that the Government of Gujarat has specifically instructed the respondent corporation that as per the policy and rules and regulations of the Government, house rent allowance is not to be paid to the employees who are occupying the quarters in question and economic rent at the rate of 400/- is to be deducted by the corporation which in turn has to be paid to the Government. It is also contended that out of 142 employees who initially took possession of the quarters, only 55 have actually started residing in the quarters and remaining 87 have given the possession of their quarter back. It is also submitted that the corporation is paying house rent allowance to the employees who have returned possession of the quarters in question. It is submitted that in view of the rules regulations and policy of the Government, the employees who are occupying the quarters are not entitled

to the house rent allowance and, therefore, the action of the respondent corporation is just and the petitioners are not entitled to any reliefs in this group of petitions. Ultimately, the respondent corporation has submitted that since the workmen concerned have waived their right to claim house rent allowance while accepting the terms and conditions, the petitioners are not entitled to the reliefs as prayed for and, therefore, all these petitions are required to be dismissed with costs.

I have heard the learned advocates for the respective parties.

Learned advocate Mr.. Brahmbhatt appearing for the petitioners herein has pointed out that in para 8 of the reply filed by the respondent corporation, it is mentioned that as far as the economic rent is concerned, it is fixed by the Government and it is also received by the Government and the Corporation is mere collecting agency and it is for the Government to decide the economic rent and the petitioners should make representation before the Government if they feel that it is excessive. He has further submitted that each of the workmen is paying economic rent of Rs.400/- for each quarter and similarly, losing the benefit of the house rent allowance which comes to about Rs.700/- or so. Therefore, each employee is losing an amount of about Rs.1100/- per month for occupying the quarter. He has further submitted that these are not the rent free quarters given to each employee by the Government or by the Corporation. He has submitted that these are not the quarters of the corporation given bo the concerned workmen. Reference has been made to certain relevant letters which has been referred to in the petition. He has also referred to the pay slip wherein the house rent allowance is not paid to such employees who are having possession of the quarters. There is also a pay slip of the workman namely N.P.Patel who received HRA of Rs. 698/- from the corporation. There is letter dated 16thJune, 1999 annexure H addressed to the Minister of Roads and Buildings Department by the union. In short, it is the submission of Mr. Brahmbhatt that once the workers are paying economic rent to the Government, then, the Corporation is not entitled to deny the benefit of the house rent allowance. he has produced pay slip in respect of some of the employees of different corporations namely Ahmedabad Telecom District, Gujarat Rural Industrial Marketing Corporation Ltd. and Gujarat Charm Udhyog Development Corporation Ltd. and from the said pay slip, he has tried to submit that inspite of having quarters by such employees, said employees of

those corporations are also getting house rent allowance. He has pointed out that at the time of allotment of the quarters in question, there was some understanding between the corporation and the union that in case if any employee occupying the quarters, then they have to pay only Rs.400/- to the Government and they will not be adversely affected by discontinuing the payment of house rent allowance on account of their occupation of the quarters. He has submitted that the Government is concerned with economic rent of Rs.400/- per month from each of the workman who has occupied the quarter and, therefore, the respondent corporation is not justified in discontinuing the payment of house rent allowance and, therefore, these petitions should be allowed by directing the respondent corporation to pay to the workmen concerned house rent allowance.

As against that, learned advocate Mr. Hardik Raval appearing for the respondent corporation has pointed out that the GSO No. 863 of 1988 is based on the settlement dated 23rd November, 1984 wherein the circular has been issued for entitlement of the house rent allowance with effect from 1st June, 1987 and the right of house rent allowance has also been specified in the said GSO. Relying upon the said GSO, he has submitted that only those employees who are not occupying the quarters given by the corporation or purchased by the government are entitled to claim house rent allowance. In other words, he has submitted that the employees who are occupying the quarters are not entitled to claim and receive the house rent allowance. He has submitted that the action of the respondent corporation is based on the policy of the corporation and since the petitioners are not challenging the policy of the Government and the corporation, since the petitioners are not challenging the service conditions, the petitioners are not entitled to the reliefs prayed for in these petitions. He has submitted that from the very beginning, it is the policy of the corporation that if any employee is occupying the quarter, then, such employee shall not be entitled to claim and receive the house rent allowance. He has also submitted that similarly, State of Gujarat in its Finance Department has also issued similar circular on 1st June, 1987 wherein in respect of entitlement of the house rent allowance, it is mentioned in item no.2 of the said circular that the house rent allowance at the above rates shall be paid to all the employees other than those provided with the Government owned/hired accommodation without requiring them to produce the rent receipt. Therefore, he has submitted that the action of the

respondent corporation is based on its own policy as well as the policy of the Government and the respondent corporation is justified in not paying house rent allowance to those employees who have been given the housing accommodation. He has also produced on record terms and conditions of of allotment of such quarters to the concerned employees at Gandhinagar. He has submitted that item 27 and 28 of such terms and conditions are relevant. As per clause 27 of the terms and conditions of allotment, an undertaking has been given by the employee concerned that immediately after getting possession of the quarter, he shall be permitting for deducting Rs.400/- towards economic rent per month from his salary and to deduct two months' economic rent in advance and to make payment of economic rent in accordance with the rules and regulations of the Government from time to time. As per clause 28 of the said terms and conditions, an undertaking has been given to the effect that he is permitting to deduct two months' economic rent in advance and that he shall not raise any dispute as regards House Rent Allowance.

Undertaking has been executed by each of the concerned workmen undertaking to the corporation that each workmen has permitted the corporation to pay Rs.400/- as economic rent and the said amount has been permitted to be deducted from the salary of each of the employee of the corporation. Not only that, even two months' advance economic rent was also required to be deducted from the salary of each workman and that permission was granted by each workman. Learned advocate Mr. Raval has also produced on record document in respect of entitlement to house rent allowance by such employee who occupied quarter. He has submitted that almost all the employees are entitled to house rent allowance which comes to Rs.200.00 to Rs.900.00 p.m. Learned advocate Mr. Raval has produced on record letter dated 25.6.2000 as also an undertaking given by one of the employee namely Mr. J.M. Raval and the Government resolution concerning house rent allowance dated 1st June,1987 and the General Standing Orders No.863 of 1988 dated 18th March,1988 has also been produced on record. Copies thereof has been supplied to the learned advocate for the petitioners. He as also pointed out two letters on record. One of which is the letter dated 11.12.1998 addressed to the Executive Engineer, Construction Division of ST Corporation by the Section Officer of the Roads and Buildings Department. In the said letter, it is informed to the corporation by the Section Officier that the Government quarters at Gandhinagar has been allotted to the employees of the corporation on the basis

of economic rent quarters J1,J2 and J-Chh. It is also mentioned in the said letter that the corporation is not required to pay house rent allowance to those employees who have been allotted quarters according to the existing policy or the rules and regulations of the Government. In the said letter, it is also mentioned that the corporation has to pay Rs.400/- towards economic rent for each quarters to the Government. In response to the said letter dated 11.12.1998, the Managing Director of the respondent corporation has addressed a letter dated 12.1.1999 to the Secretary,R. & B. Department wherein detailed proposal has been made by the corporation for allotment of quarters to such employees of the corporation who are working at Gandhinagar Depot and the Corporation has accepted the proposal made by the State Government. Copies of the said two letters has also been supplied to the learned advocate for the petitioners by the learned advocate for the corporation. Learned advocate Mr.Raval has relied upon item no.3 of the settlement dated 21.12.1989 for the period from 1st August, 1987 to 31st July, 1992 which provides that the Corporation is agreeing to pay house rent allowance, compensatory local allowance as per the policy of the Government which has been declared by the State Government for its employes.He has pointed out that the Government's policy has been accepted by the Corporation in respect of payment of house rent allowance declared by the Government from time to time for its employees. He as submitted that it is the policy of the State Government not to pay house rent allowance to such employees who are occupying the Government quarters He has submitted that such policy of the Government has been accepted and implemented by the corporation and, therefore, the corporation is justified in discontinuing the payment of house rent allowance to the employees who have been occupying the quarters allotted by the corporation. He has also submitted that since the petitioners have not challenged the policy before this court, this petition should not be entertained. He has submitted that if the decision or action of the corporation not to pay house rent allowance to such employee is based on policy and if such policy is not under challenge, but mere action taken on the basis of such policy is under challenge, then, such challenge cannot be entertained by this court and hence all these petitions are required to be dismissed. He has also submitted that there are two classes of the employees working in the corporation as well as in the State of Gujarat.It is a policy of the State of Gujarat while granting benefit of house rent allowance to their employees that if any employee who occupied the

Government accommodation, then, that employee is not entitled to house rent allowance. Such policy has been adopted and implemented by the corporation since very beginning and, therefore,there is no any unreasonableness or arbitrariness as alleged in discontinuing the payment of house rent allowance to such employees.

Learned Government Pleader Mr. A. D. Oza appearing for the respondent State of Gujarat has pointed out certain rules from the Bombay Civil Service Rules for granting house rent allowance which is subject to certain conditions. He has relied upon rule 4 of the Bombay Civil Service Rules. As per rule 4 of the said rules, allowance will not be payable to those who occupied the accommodation provided by the Government and those to whom the accommodation has been offered by the Government but has been refused or those who have not been allotted the accommodation. Mr. Oza has submitted that the grant of house rent allowance will not be admissible to those employees who occupied the accommodation provided by the Government and on the basis of the said rules, policy has been enacted by the State Government. Mr. Oza has submitted that even in case of an employee occupying quarter at a particular place and he is transferred from said place to other place and even though such employee occupied quarter at the old working place and at transferred place, employee is entitled for house rent allowance but merely considering the fact that such an employee has occupied quarter in earlier place even though that, employee is not entitled to the amount of house rent allowance because of the fact that he occupied quarter in place prior to his transfer. He has pointed out that there are various types of rent taken by the Government from its employees. In the present petitions, J1, J2 and J-Chh quarters are in question which have been allotted to such employees. Learned G.P. Mr. Oza has produced on record resolution dated 9th June, 1998 and he has submitted that the standard rent of such quarter is Rs.300/- and economic rent is Rs.400/and market rent is Rs.1600/-. Considering this rent, Mr. oza has submitted that if any employee is entitled to house rent allowance of Rs.700/- as alleged by the petitioner and and considering Rs.400/- as economic rent p.m. for each quarter, then, it comes to Rs.1100/- and, therefore, it is less than the market rent. He has further submitted that for the employees of the corporation, the Government has provided such quarters at economic rent though otherwise, the Government is entitled to recover the market rent. He has, therefore, submitted that the section officer of the Roads and Buildings Department has rightly informed the corporation vide letter dated

11.12.1998 that if any employee is occupying such quarter at economic rent, then, such employee shall not be paid house rent allowance by the corporation. Such action is based upon the policy of the Government and the Government policy is based on the provisions of the Bombay Civil Service Rules. Therefore, there is no arbitrariness or unreasonableness on the part of the corporation in discontinuing payment of house rent allowance to such employees who have been occupying the quarter. Therefore, according to him, the corporation is justified in not paying house rent allowance to such employees. He has also submitted that the action impugned herein is based on the policy and the policy is not challenged before this court and, therefore, challenge to mere action cannot be entertained and, therefore also, this group of petitions is required to be dismissed.He has also submitted that the petitioners have not proved any legal right to receive house rent allowance and, therefore, in absence of such legal right to receive such allowance, petition under Article 226 of the Constitution of India should not be entertained by this court. He has further submitted that there is no legal obligation on the part of the corporation to pay house rent allowance in such case to such employees and, therefore, according to Mr. Oza as well as Mr. Raval, the petitioners are entitled to no reliefs and this group of petitions is therefore required to be dismissed with costs.

I have considered the arguments advanced by the learned advocates for the respective parties. In the present group of petitions, the question which is required to be considered by this court is as to whether the concerned employees are entitled to payment of house rent allowance when they have been occupying the quarters allotted on the basis of economic rent from the Government or not. Admittedly, the petitioners have not challenged the policy of the Corporation and/or the Government wherein it is provided that the house rent allowance is not admissible to the employees who have been occupying the Government accommodation i.e. quarters. Said policy has been produced on record i.e. GSO 863 of 1988 dated 18th March, 1988 wherein it is provided that the employees are not entitled to house rent allowance when the quarter has been provided by the corporation to such employee. Similarly, as per the Government Resolution dated 1st June, 1987 also, it is clear that the house rent allowance at the above rates shall be paid to all employees other than those who are provided government owned/hired accommodation. Over and above that,when the quarters were, in fact, allotted to

such employees, and when the possession was handed over to them, such employees had accepted the terms and conditions as per clause 27 and 28 of the said terms and conditions as stated above and, therefore, in view of that also, now such employees cannot raise such dispute. Therefore, considering this undertaking given by individual workmen at the time of allotment of the quarters in question and also considering the GSO No. 863 of 1988 and the Government resolution dated 1st June, 1987, employees working in the Government as well as in the corporation who occupied the Government accommodation are not entitled to the amount of house rent allowance as a matter of right and that is an established policy of the Government not to pay house rent allowance to such employees. Such policy is not under challenge. This group of petitions is under Article 226 of the Constitution for issuance of writ of mandamus against the Government as well as the Corporation. Writ of mandamus can be issued in the certain circumstances.

The order of mandamus is of a most extensive remedial nature and is in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to supply defects of justice; and accordingly it will issue to the end that justice may be done in all cases where there is a specific legal right and no specific legal remedy for enforcing such right and it may issue in cases where although there is an alternative legal remedy, yet such mode of redress is less convenient, beneficial and effectual.

Mandamus is an extraordinary legal remedy with which equity has nothing to do and in consideration of which no equitable rights or principles can be taken into consideration except solely for the purpose of determining whether, in the exercise of legal discretion, the writ should issue. Mandamus has been denominated a hard and fast writ, an unreasonable writ, a cast-iron writ, the right arm of the Court, the exponent of judicial power; an inflexible peremptory comand to do a particular thing therein specified without condition, limitation or terms of any kind, one of the highest writs known to the law. It is an extraordinary writ because it is limited by conditions that are not applicable to an ordinary suit at law. It is reserved for extraordinary emergencies, being a supplementary means of obtaining substantial justice where there is a clear legal right

and no other adequate legal remedy.

In case of Mani Subrat v. State of Haryana reported in AIR 1977 SC 276, the apex court has observed as under:

"It is elementary though itis to be restated that no one can ask for mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something."

In case of State of MP versus Mandawar, reported in AIR 1954 SC 493, the apex court has observed as under :

"a writ of mandamus was sought by the petitioner government servant for getting dearness allowance at a particular rate. The Court dismissed the petition holding that there was no righton the Government servants to grant of dearness allowance; it imposes no duty on the State to grant it. It merely confers a power on the State to grant compassionate allowance at its own discretion and no mandamus can issue to compel the exercise of such a power. Nor, indeed, could any other writ or direction lbe issued in respect of it, as there is no right in the applicant which is capable of being protected or enforced."

Thus, in view of the principles laid down by the apex court in the aforesaid decisions, what can be enforced by a writ of mandamus is legal right of the petitioner and not moral or equitable obligations on the part of the respondents. It must be shown that the statute imposed legal right and the appellant has a legal right under the statute to enforce the same.

In case of Rajalakshmiah v. State of Mysore reported in AIR 1967 SC 993, a concession was shown in favour of certain employees while the petitioners were not given the same treatment by granting concession in their favour. They applied for a writ of mandamus. Dismissing the petition, the supreme Court observed as under:

"No doubt, some concession had been shown to the first batch of 41 persons and the batches of

persons who had come in after the batch of 63 persons also received some concession, but after all these were concessions and not something which theycould claim as of right. The State of Mysore might have shown some indulgence to this batch of 63 persons but we cannot issue a writ of mandamus commanding it to do so."

Considering the above proposition of law, writ of mandamus cannot be issued in such a situation when the petitioner and the concerned employee has not been able to establish their legal right to receive house rent allowance from the corporation when they occupied the Government accommodation on economic rent of Rs.400. There is also no legal obligation or duty upon the corporation to pay such allowance to such employees who have been provided the government accommodation on economic rent of Rs.400/- and, therefore, in absence of legal right and legal duty imposed upon the respondent, petition cannot be accepted and the prayers made by the petitioners in this group of petitions cannot be granted under Article 226 of the Constitution of India.

It is also necessary to refer the identical situation which has arose before the apex court in case of State of West Bengal versus Rabindra Nath and others reported in 1998(1) GLH 791. In the said decision, the apex court has observed that the classification of employees for the purpose of HRA on the basis of house accommodation provided and not provided-valid as it has a nexus with the object of granting HRA-Policy Decision-Reasonable-Valid.

Relevant observations made by the apex court in the said decision at para 27 and 28 as under:

"After giving our careful consideration to the facts and circumstances of the case and the submissions made by the respective counsel for the parties,it appears to us that distinction between two classes of government employees, namely those who have been provided with government accommodation qua government employees and licence in respect of such government accommodation being co terminus with the service,stand on a different footing from the other government employees who have not been provided with such government accommodation. In the instant case, it has not been demonstrated with relevant documents that in LIG/MIG/HIG flats

belonging to the government, the government employees are allowed to continue as tenant like ordinary members of the public by virtue of being in government service. Even if it is assumed that some government employees have got tenancy rights under the State Government in respect of public premises such tenancy right has not been given qua government servant but as member of public. Under the 1984 Act, allotment of government flat in government premises can only be made as licensee, period of licence being co terminus with employment. Under the 1984 Act, the status of government employees occupying government premises have been statutorily altered and such employees have become licensees. Therefore, such licensees stand entirely on a different footing. Such distinction has a reasonable basis and it cannot be contended that such distinction is without any nexus that such distinction is without any nexus to the object of grant of HRA. It is the positive case of the State Government that the writ petitioners are occupying government premises as defined under 1984 Act holding the status of licensee. It is the case of the State Government that they have been provided such government accommodation as licensee in government premises which are not meant for occupation by the members of the public. Even if it is assumed that in government premises, non government employees has been allowed to occupy as tenant, the grant of such tenancy isnot a regular affair and such tenancy even if any in government premises is against the scheme under the 1984 Act. It is also the case of the State Government that nominal licence fee is required to be paid for such occupation in government premises.Since the writ petitioners and the similarly circumstanced employees having accommodation in government premises qua government government employees are licensees and the licence is co terminus with the service, they are required to pay only nominal fee for such occupation as found by the Pay Commission. Therefore,there is justification that such government employees are not to be given the full amount of HRA but they will be reimbursed to the extent of licence fee paid by them.

In our view, the revised policy decision in the matter of payment of HRA is not only reasonable but also fair and just. It will be improper and

unjust if by virtue of being goernment employees they are favoured with accommodation in government premises as licensees and on such account are required to pay only nominal licence fee for such occupation, yet they will be paid the full amount of HRA so that they can make profit out of HRA."

Therefore, in view of the aforesaid observations made by the apex court in aforesaid decisions and also considering the facts and circumstances of the case, taking into consideration the fact that the Government is having policy not to pay house rent allowance to the employees who have been provided housing accommodation and since such policy has been adopted by the corporation, the petitioners are not entitled to the reliefs prayed for in this group of petitions. Since such an action of the respondent no.1 corporation is based on the policy which is not under challenge but mere action is challenged, such petition cannot be entertained and also considering the provisions of the Bombay Civil Service Rules, GSO 863 of 1988 dated 18thMarch, 1988, the Government Resolution dated 1st June, 1987 and undertaking given by the individual workmen not to raise any dispute in respect of house rent allowance, and also considering the fact that the market rent of such quarter is fixed by the Government at Rs.1600/- and considering the fact that in this petition, the petitioners have not challenged the policy, the petitioners have no any legal right to claim house rent allowance and have not proved any legal obligation or duty of the respondent corporation to pay such allowance and, therefore, present petitions are required to be dismissed with costs.

Recently, in case of M.V. Chauhan versus State of Gujarat reported in 1998 (1) GLR 793, the apex court has considered the question of writ of mandamus when can be issued by the High Court. The apex court has observed in the said decision as under in para 22 and 23 of the report:

"Mandamus which is a discretionary remedy under Art. 226 of the Constitution is requested to be issued, inter alia, to compel performance of public duties whichmay be administrative, ministerial or statutory in nature. Statutory duty may be either directory or mandatory. Statutory duties, if they are intended to be mandatory in character, are indicated by the use of the words "shall" or "must". But this isnot

conclusive as "shall" and "must" have, sometimes, been interpreted as "May". What is determinative of the nature of duty, whether it is obligatory, mandatory or directory, is the scheme of the statute in which the "duty" has been set out. Even if the duty is not set out clearly and specifically in the statute, it may be implied as correlative to a "right".(22)

In the performance of this duty, if the authority in whom the discretion is vested under the statute does not act independently and passes an order under the instructions and orders of another authority, the Court would intervene in the matter, quash the order and issue a mandamus to that authority to exercise its own discretion.(23)."

Therefore, in view of the aforesaid two decisions of the apex court and also for the reasons stated above, the petitioners are entitled to no reliefs in these petitions. It is more so when the action under challenge is based on the policy of the Corporation as well as the State Government which is not challenged by the petitioners herein. Therefore, all these petitions are required to be dismissed. All these petitions are, therefore, accordingly dismissed. Rule is discharged. Ad interim relief granted earlier shall stand vacated with no order as to costs.

30.8.2000 (H.K. Rathod,J.)

Vyas